

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 7, 2002

**Agenda ID #1166**

TO: PARTIES OF RECORD IN APPLCATIONS (A.) 01-09-024 AND A.01-10-005

This is the draft decision of Administrative Law Judge Brown. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Carol Brown  
Carol Brown, Interim Chief  
Administrative Law Judge

CAB: avs

Decision **DRAFT DECISION OF ALJ BROWN** (Mailed 10/7/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company (U 904G) For Authority to Revise its Rates Effective January 1, 2001, in its Biennial Cost Allocation Proceeding.

Application 01-09-024  
(Filed September 21, 2001)

In the Matter of the Application of San Diego Gas & Electric Company (902G) For Authority to Revise its Gas Rates Effective January 1, 2003, in its Biennial Cost Allocation Proceeding.

Application 01-10-005  
(Filed October 5, 2001)

**INTERIM OPINION CHANGING SOUTHERN CALIFORNIA GAS  
COMPANY'S BALANCING ACCOUNT PROTECTION FOR  
NONCORE REVENUE RISK TO 100 PERCENT**

**Summary**

This decision establishes an interim order changing the balancing account protection for noncore revenue risk for Southern California Gas Company (SoCalGas) to 100 percent effective from January 1, 2003, until a decision issues in SoCalGas' Biennial Cost Allocation Proceeding (BCAP).

**Background**

SoCalGas and San Diego Gas & Electric Company (SDG&E) filed their BCAP applications on September 21, 2001, and October 5, 2001, respectively. Both applications included rates based on long-run marginal cost, but proposed that the Commission return to embedded cost ratemaking. SoCalGas and SDG&E filed amended applications, November 13, 2001, and November 21, 2001,

respectively, to present rates resulting from an embedded cost approach to cost allocation.

On December 4, 2001, an initial prehearing conference (PHC) was held and the procedural schedule proposed by the parties was adopted. On December 11, 2001, the Commission issued Decision (D.) 01-12-018, approving the Comprehensive Settlement Agreement (CSA) in Investigation (I.). 99-07-003, the Gas Industry Reform (GIR) proceeding. The GIR significantly alters the market structure for gas transportation and storage services in southern California by unbundling transmission and storage costs. Both utilities told the Commission that the GIR would require them to file revised BCAP applications.

On December 3, 2001, the Electric Generator Alliance (EGA) filed a motion to strike the embedded cost proposals of SoCalGas and SDG&E. A hearing on EGA's motion was scheduled for January 10, 2002. On December 28, 2001, the Office of Ratepayer Advocates (ORA) filed a motion to suspend the procedural schedule adopted at the December 4, 2001, PHC on the ground that since the utilities would be filing revised applications, ORA needed more time to respond than the initial procedural schedule allowed.

At the January 10, 2002, hearing on EGA's motion, SoCalGas was ordered to file its revised application by March 4, 2002, and SDG&E to file its revised application by March 18, 2002. The parties were ordered to meet and confer to develop a revised procedural schedule. ORA's motion to suspend the original schedule was granted, and a new schedule was adopted with evidentiary hearings scheduled for August and September 2002, and ORA's testimony due June 14, 2002.

On March 19, 2002, ORA filed a Motion to Suspend the Procedural Schedule and to defer the BCAP Proceedings for a period of

12 months. Responses to ORA's Motion were received on April 3, 2002, from The California Industrial Group and the California Manufacturers & Technology Association (CIG/CMTA); the EGA, SoCalGas and SDG&E, Southern California Generation Coalition (SCGC); California Cogeneration Council (CCC); and Watson Cogeneration Company (Watson). ORA filed a reply to the responses to its Motion on April 9, 2002. On April 23, 2002, the assigned ALJ issued a ruling granting ORA's motion and the proceedings were deferred until March 2003. The ALJ Ruling stated that SoCalGas' request to modify the 75/25 (ratepayer/shareholder) balancing of noncore throughput revenue risk would be addressed in a subsequent proposed decision. We are addressing this issue today.

**SoCalGas Request for 100%  
Balancing Account Protection**

In its April 3, 2002 Response, SoCalGas objected to ORA's Motion to Suspend the Procedural Schedule and Defer the Proceeding. However, SoCalGas stated that should ORA's motion be granted, the continuance should address two items to ensure that no party was harmed by the substantial delay. First, SoCalGas should be given 100 percent balancing account protection of noncore revenue risk from the time the 2003 BCAP was to take effect (January 1, 2003) until the date the new BCAP rates go into effect; and second, the appropriate ratemaking treatment and allocation of the costs to expand Line 6900 should be resolved. The issue relating to the balancing account treatment for noncore revenue risk is addressed in this Decision. The treatment of cost allocation for expansion of Line 6900 was heard in Investigation (I.) 00-11-002 and will be decided in that case.

In the 1999 BCAP decision (D.00-04-060), the Commission approved the Joint Recommendation (JR) of various parties that adopted, among other things,

a 75%/25% (ratepayer/shareholder) balancing account mechanism for noncore throughput variation. The 1999 BCAP decision found this to be a reasonable compromise since ORA and other parties took the position that SoCalGas' forecast was too low, while SoCalGas opined that ORA's forecast was too high.<sup>1</sup> In its decision, the Commission indicated that the 75/25 balancing account would continue to place shareholders at some risk for discounting, while protecting shareholders and ratepayers in the event the adopted forecast is significantly off the mark.<sup>2</sup> In its response to ORA's Motion to defer the BCAP proceedings, SoCalGas states that the parties to the JR intended that the agreements reached on specific items would apply only through the end of the BCAP period, December 31, 2002.<sup>3</sup> This date is consistent with Findings of Fact 10 and 11 in D.00-04-060.

In its Response, SoCalGas indicates that it is forecasting significantly reduced noncore throughput compared to that adopted in the 1999 BCAP decision – an annualized average reduction of about 10% in total gas demand, from the 950.4 MMdth adopted in the BCAP to 857.0 MMdth. However, the forecasted reduction in noncore throughput is more than 20 percent, from 610.5 MMdth adopted in the 1999 BCAP to 473.2 MMdth. If SoCalGas' revised forecast for noncore throughput for the years 2003 and 2004 is realized, that portion of its revenue requirement for which noncore customers are responsible will be collected from annual noncore throughput of approximately

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<sup>1</sup> D.00-04-060, *mimeo.*, at 23.

<sup>2</sup> *Id.* at *mimeo.*, 23, 24.

<sup>3</sup> Joint Recommendation of SoCalGas, ORA, TURN, CIG/CMA, SDG&E, Chevron and Texaco Application (A.) 98-10-012, I. Paragraph 3.

473.2 MMdth based upon rates that were calculated assuming annual noncore throughput of approximately 610.5 MMdth. Thus, there would be a significant undercollection of the revenue requirement. Under the current 75/25 (ratepayer/shareholder) balancing of noncore revenue throughput risk, 25 percent of the resulting undercollection of revenue would never be recovered from noncore customers. SoCalGas argues that this outcome, resulting from a delay in the proceeding neither requested nor caused by SoCalGas, would be “unconscionable and unquestionably punitive to SoCalGas’ shareholders and would amount to a windfall for SoCalGas’ noncore customers.”<sup>4</sup>

SoCalGas argues that if the BCAP proceeding is suspended, no one will ever know what the Commission would adopt as the appropriate noncore throughput forecast for 2003 and 2004. However, it predicts that an application filed in the first half of 2003 will likely morph into a 2005 BCAP, with rates becoming effective in late 2004 at the earliest. Consequently, the appropriate test years for the BCAP, with the adoption of ORA’s motion, would be 2003 and 2004. With this delay, there will never be a Commission decision identifying the appropriate forecast for those two years. SoCalGas speculates that it is highly unlikely there will be any opportunity to retroactively adjust noncore rates to compensate them for the revenue it would have received during 2003 and 2004 had the 2003 BCAP been litigated on schedule.

For these reasons, SoCalGas argues that it is only fair and equitable for the Commission to issue an order instituting 100 percent balancing account protection for noncore throughput revenue risk during the period of delay, from

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<sup>4</sup> Response of SoCalGas and SDG&E to Motion of the Office of Ratepayer Advocates to Suspend the Procedural Schedule and Defer the Proceeding, April 3, 2002, p.12.

January 1, 2003 until the new BCAP rates go into effect. It states that an order of this type will mitigate against the adverse consequences of delaying the proceeding. With this mitigation, neither SoCalGas' shareholders nor its noncore customers will be penalized or unfairly enriched by the failure of the Commission to recalibrate noncore throughput forecasts as presently scheduled. Furthermore, SoCalGas states that the 100 percent balancing does not require any change in revenue requirement and will not require a change in rates except if required to amortize an over or undercollection in a regulatory balancing account. SoCalGas indicates that the significant decline predicted for noncore throughput is driven by forces beyond the control of SoCalGas, including the construction of new, efficient electric generation facilities not located on SoCalGas' system that will impact the load of existing electric generation customers.

**Responses to SoCalGas' Proposal to  
Institute 100 Percent Balancing of Noncore  
Throughput Revenue Risk**

Watson commented on SoCalGas' balancing proposal in its response to ORA's Motion. Watson points out that the CSA approved in the GIR, D.01-12-018 put SoCalGas 100 percent at risk for recovery of unbundled backbone transmission and storage costs, and specified that the Commission will review SoCalGas' risk for local transmission revenues in the BCAP case. Watson further argues that the Commission needs to consider placing SoCalGas at greater risk for recovery of its local transmission and distribution costs. Watson believes that guaranteeing SoCalGas recovery of its revenues in the noncore market removes any incentive for the utility to reduce its costs in order to keep its service to electric generators competitive with the comparable costs of generators located elsewhere. With regard to noncore throughput, Watson states that gas and electric demand have

moderated significantly, due principally to conservation efforts and a slower economy. In addition, new generating capacity is in operation or under construction in California and the western U.S.

Although EGA does not directly address SoCalGas' proposal for 100 percent balancing for noncore throughput revenue risk, it questions why noncore balancing accounts would be so dramatically undercollected at this time, since the throughput of noncore customers, particularly electric generation customers, in 2001, was well above the amounts forecasted in the last BCAP. EGA states that at a minimum, it would like to have the opportunity to ascertain through discovery or otherwise, that the amounts in the balancing accounts are legitimate and accurate.

None of the other parties responding to ORA's Motion to defer the BCAP proceeding 12 months commented on SoCalGas proposal for 100 percent balancing account protection for noncore throughput revenue risk.

#### **ORA's Reply to SoCalGas' Balancing Account Proposal**

On April 9, 2002, ORA replied to the responses to its motion to suspend. In its Reply, ORA argues that the current level of balancing account protection adequately protects SoCalGas from the risks associated with throughput variation. ORA reasons that since noncore local and distribution costs represent only 10 percent of the total revenue requirement, and 75 percent of that amount is protected by the balancing account, the risk to shareholders is negligible. ORA states that excluding costs unbundled by the GIR, provides current core and noncore balancing accounts revenue protection for 97.5 percent of the base revenue requirement. While ORA agrees that there is tremendous uncertainty associated with forecasting EG throughput, it notes that SoCalGas was not "clamoring" for 100 percent balancing account protection when EG throughput



was exceeding the adopted forecast in 2000 and 2001. In summary, ORA states that if the Commission does provide SoCalGas with 100 percent balancing account protection, it should not take effect before June 1, 2003. ORA believes this date is more realistic than January 1, 2003 for a BCAP decision to be approved, if the BCAP were processed under the schedule in effect on April 9, 2002.

### **Discussion**

The last BCAP decision, D.00-04-060 adopted a Joint Recommendation of settling parties which provides SoCalGas with 75/25 (ratepayer/shareholder) balancing account protection for noncore throughput revenue risk. D.00-04-060 was to be in effect through the end of the BCAP period December 2002, Finding of Fact #10. On April 23, 2002, the ALJ's Ruling Granting the Motion of the ORA to Defer the BCAP Proceedings for 12 Months was issued. In this ALJ Ruling, SoCalGas was instructed to refile its BCAP Application on March 7, 2003. With this deferred filing date, it is realistic to anticipate that a final decision may not be rendered until late 2004.

The CSA, adopted in the GIR, D.01-12-018, places SoCalGas 100 percent at-risk for recovery of unbundled backbone transmission and storage costs, and specifies that the Commission will review SoCalGas' risk for local transmission revenues in the next BCAP case. ORA's argument that excluding the costs unbundled by the CSA, the current balancing accounts provide revenue protection for 97.5% of the base revenue, presents difficulty at this time, since the GIR decision has yet to be implemented. Watson's comments on the impact of the GIR decision on unbundled backbone transmission and storage costs present the same dilemma. Watson's argument that guaranteeing SoCalGas recovery of its revenues in the noncore market, removes any incentive for the utility to

reduce its costs in order to keep its service to electric generators competitive with comparable costs of generators located elsewhere, is better advanced in the BCAP where all parties have an opportunity to respond.

Parties agree that during 2001, actual noncore throughput transcended the BCAP adopted forecast greatly. SoCalGas' forecast for the years 2003 and 2004 may be low or high. SoCalGas did not support the delay of the BCAP proceeding. Granting SoCalGas the 100 percent balancing account protection does not require any change in revenue requirements and will not require a change in rates except if required to amortize an over or undercollection in a regulatory balancing account.

For these reasons, we shall allow SoCalGas 100 percent balancing account protection for noncore throughput revenue risk during the period of BCAP delay, from January 1, 2003 until the new BCAP rates go into effect. This 100 percent balancing treatment shall not set a precedent for or against whatever the Commission shall adopt in the next BCAP.

EGA questions why balancing accounts are undercollected at this time and asks the Commission to keep this proceeding open for the purpose of allowing parties to conduct discovery on the basis for any proposed rate changes related to the balancing accounts. We find this request to be impractical. The BCAP proceeding was deferred because of staffing constraints of ORA. Continuing discovery now on a proceeding which will require a new Application in March, 2003 and which will undoubtedly incorporate many changes between now and then defeats the purpose of delaying the BCAP. A balancing account is just that. It protects ratepayers and/or shareholders at the adopted formula. Any over-recovery or under-recovery of revenue is amortized back into rates. SoCalGas files an Advice Letter each October, which updates the balancing

accounts to be amortized into rates on January 1, of the following year. EGA will have ample opportunity to examine that advice letter and protest balancing account amounts at that time should they deem it necessary.

### **Comments on Draft Decision**

The draft decision of Administrative Law Judge (ALJ) Brown in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

### **Assignment of Proceeding**

Geoffrey Brown is the assigned Commissioner and ALJ Brown is the assigned Administrative Law Judge.

### **Findings of Fact**

1. The GIR decision has not yet been implemented.
2. It is impossible to speculate what formula for balancing account protection the Commission may adopt in the next BCAP. So too, it is impossible to speculate what noncore throughput forecast will be adopted. In the case of the throughput forecast, it is just that - a forecast – destined to be inaccurate by virtue of its being a prediction of what is to occur in the future.
3. Allowing SoCalGas the 100 percent balancing account protection does not require any change in revenue requirement and will not require a change in rates except if required to amortize an over or undercollection in a regulatory balancing account.

### **Conclusions of Law**

1. It is reasonable to allow SoCalGas 100 percent balancing for noncore throughput revenue risk during the period from January 1, 2003, until the new BCAP rates go into effect.

2. This 100 percent balancing treatment will not set a precedent for or against whatever the Commission shall adopt in the next BCAP.
3. This interim order shall be effective immediately.

**INTERIM ORDER**

**IT IS ORDERED** that Southern California Gas Company shall be allowed 100 percent balancing account protection for noncore throughput revenue risk during the period from January 1, 2003, until the new Biennial Cost Allocation Proceeding.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.